



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1255]

Certain Apparatus and Methods of Opening Containers; Notice of a Final Determination Finding Violations of Section 337; Issuance of a General Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm an initial determination (“ID”) (Order No. 11) of the then-presiding chief administrative law judge (“CALJ”) granting summary determination that certain defaulting respondents have violated section 337 of the Tariff Act of 1930, as amended, by importing, selling for importation, or selling in the United States after importation certain apparatus and methods of opening containers that infringe claim 12 of U.S. Patent No. 10,519,016 (“the ’016 patent”). The Commission has determined that the appropriate remedy is a general exclusion order excluding infringing container opening apparatuses. The Commission has also determined to set a bond in the amount of 100 percent of the entered value of the excluded products imported during the period of Presidential review. This investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On March 18, 2021, the Commission instituted this investigation based on a complaint filed by Draft Top, LLC (“Draft Top”) of Long Beach, New

Jersey. 86 FR 14765 (Mar. 18, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (“section 337”), based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain apparatus and methods of opening containers by reason of infringement of claim 12 of the ’016 patent. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation (“NOI”) named nine respondents: KKS Enterprises Co., Ltd. of Hangzhou, China; Kingskong Enterprises Co., Ltd. of Hangzhou, China; Du Zuojun of Shenzhen, Guangdong, China; WN Shipping USA, Inc. of Inwood, New York; Shuje Wei of Pomona, California; Express Cargo Forwarded, Ltd. of Los Angeles, California; Hou Wenzheng of Hebron, Kentucky (collectively, the “Defaulting Respondents”); Mintiml of Yangzhou, Jiangsu, China; and Tofba International, Inc. (“Tofba”) of Hawthorne, California. *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.*

The Commission subsequently terminated respondents Tofba and Mintiml from the investigation based on Draft Top’s withdrawal of the complaint as to those respondents. *See* Order No. 6 (May 12, 2021), *unreviewed by* Comm’n Notice (May 27, 2021) (terminating Tofba); Order No. 9 (Aug. 11, 2021), *unreviewed by* Comm’n Notice (Aug. 24, 2021) (terminating Mintiml).

On July 29, 2021, the Commission found the seven Defaulting Respondents in default for failing to respond to the complaint and NOI and failing to show cause why they should not be found in default. Order No. 8 (July 12, 2021), *unreviewed by* Comm’n Notice (July 30, 2021). The Defaulting Respondents are the only respondents remaining in this investigation.

On August 20, 2021, Draft Top filed a motion seeking summary determination that the Defaulting Respondents have violated section 337 and requesting that the Commission issue a general exclusion order and set a 300 percent bond for any importations of infringing goods during the period of Presidential review. On September 17, 2021, Draft Top filed a supplement to its motion concerning certain “inadvertently omitted” evidence of its domestic expenditures in

2020. That same day, OUII filed a response supporting Draft Top's motion and requested remedial relief except on the issue of bonding, submitting instead that a bond of 100 percent, not 300 percent, is appropriate. No Defaulting Respondent filed a response to Draft Top's motion.

On December 20, 2021, the former CALJ issued the subject ID granting Draft Top's motion and finding violations of section 337 by the Defaulting Respondents. Specifically, the ID finds that: (i) Draft Top satisfied the importation requirement as to the Defaulting Respondents; (ii) the Commission has subject matter, personal, and in rem jurisdiction in this investigation; (iii) the Defaulting Respondents' accused products practice claim 12 of the '016 patent; (iv) claim 12 of the '016 patent has not been shown invalid; and (v) Draft Top satisfied the technical and economic prongs of the domestic industry requirement as to the '016 patent. The ID also includes the CALJ's recommended determination on remedy and bonding, recommending that the Commission issue a general exclusion order and set a 100 percent bond for any importations of infringing products during the period of Presidential review. No party petitioned for review of the ID.

The Commission did not receive any submissions on the public interest from the parties pursuant to Commission Rule §210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission's Federal Register notice. 87 FR 238-39 (Jan. 4, 2022).

On February 3, 2022, the Commission determined not to review the ID's grant of summary determination of violations of section 337. 87 FR 7499-501. The Commission's notice also requested written submissions on remedy, the public interest, and bonding. *Id.* On February 17, 2022, Draft Top and OUII filed initial written submissions in response to the Commission's notice. On February 24, 2022, Draft Top and OUII filed reply written submissions. No other submissions were received.

Having examined the record in this investigation, including the parties' submissions, the Commission has determined that the appropriate remedy is a general exclusion order prohibiting

the unlicensed importation of container opening apparatuses that infringe claim 12 of the '016 patent, pursuant to section 337(d)(2), (19 U.S.C. 1337(d)(2)). The Commission has determined that the public interest factors do not preclude issuance of this remedial order. The Commission has also determined to set a bond in the amount of 100 percent of the entered value of the excluded products imported during the period of Presidential review (19 U.S.C. 1337(j)). The Commission issues its opinion herewith setting forth its determinations on certain issues. The Commission's order and opinion were delivered to the President and United States Trade Representative on the day of their issuance. This investigation is hereby terminated.

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules §§201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service for any party without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission vote for this determination took place on April 18, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 18, 2022

Lisa Barton,

Secretary to the Commission.

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